

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

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| _____ |) | |
| IN THE MATTER OF: |) | |
| |) | |
| Build-It Bros., L.L.C. |) | |
| 38 Mussey Road |) | EPA Docket No. |
| Scarborough, ME 04074 |) | TSCA-01-2019-0055 |
| |) | |
| Respondent. |) | |
| |) | |
| Proceeding under Section 16(a) |) | |
| of the Toxic Substances Control |) | |
| Act, 15 U.S.C. § 2615(a) |) | |
| _____ |) | |

ORDER TO SHOW CAUSE

On or about July 14, 2020, Complainant, the United States Environmental Protection Agency, Region 1, submitted a Motion for Default Order and supporting documents, including a Memorandum in Support of Motion for Default Order and the EPA guidelines for assessing penalties under TSCA, entitled *Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule* (“ERPP”), to the undersigned. The Motion requests that the Respondent, Build-It Bros., L.L.C., be found in default for its failure to submit an answer in connection with the above-referenced matter.

Complainant’s Memorandum in Support of Motion for Default Order and Exhibit 5 to this memorandum request that a \$4,080 penalty be assessed against Respondent for its alleged failure to provide lead hazard information to a target housing unit owner in the form of an EPA pamphlet or EPA-approved pamphlet and obtain a written acknowledgement of receipt or a certificate of mailing at least seven days prior to the renovation, as required by 40 C.F.R. §§

745.84(a)(1) and (a)(2). In support of the \$4,080 penalty, Complainant relies upon the ERPP, which sets forth EPA's analysis of the TSCA statutory factors as they apply to, *inter alia*, violations of the Renovation, Repair and Painting Rule (RRP Rule). Appendices A and B to the EERP provide, *inter alia*, a penalty calculation methodology for violations of 40 C.F.R. §§ 745.84(a)(1) and 745.84(a)(1) involving housing units that are not occupied by children less than eighteen years of age.

Appendix A to the EERP states that the failure to provide the owner or adult occupant of the unit with a pamphlet results in a high probability of impacting human health and the environment and is considered a Level 1b violation. EERP, Appendix A at p. A-1. Because the renovated housing unit did not have occupants under the age of 18, the EERP classifies the extent of harm for this violation as minor. EERP, Appendix B at p. B-2. Accordingly, the EERP matrix at Appendix B, page B-2 determines that a \$2,840 penalty amount is appropriate for a minor, Level 1b violation of 40 C.F.R. §§ 745.84(a)(1) and 745.84(a)(1). ERPP at Appendix B, p. B-2. When adjusted for inflation in accordance with the 1.03711 penalty adjustment required by the 2018 Civil Monetary Penalty Adjustment Rule, the adjusted violation amount totals \$2,945 (rounded downward).

Complainant, however, requests that a \$4,080 penalty be assessed against Respondent for its alleged violation of 40 C.F.R. §§ 745.84(a)(1) and 745.84(a)(1). Accordingly, Complainant is hereby Ordered to show good cause as to why a \$4,080 penalty should be assessed against Respondent for its alleged violation of 40 C.F.R. §§ 745.84(a)(1) and 745.84(a)(1) rather than the penalty amount determination found in the Appendix B Matrix for a Level 1b, minor violation (i.e., \$2,840), plus the inflation adjustment.

SO ORDERED this 24th day of September 2020:

LeAnn Jensen
Regional Hearing Clerk
U.S. EPA, Region 1